Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States
October Term, 1996

TED R. PERKINS, II,
Petitioner

versus

UNITED STATES OF AMERICA,
Respondent

Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

DID THE ACTIONS OF THE PENNSYLVANIA STATE POLICE CONSTITUTE AN INTENTIONALLY COERCED ABANDONMENT OF BUS PASSENGER PERKINS' CARRY ON BAG?

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REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS

1. United States Court of Appeals for the Third Circuit, No. 95-7265 USA v. Ted Russell Perkins, II Memorandum Opinion filed June 19, 1996 - Not for Publication

   Set forth in full at Appendix pp. 28-43

2. United States District Court for the Middle District of Pennsylvania, USA v. Ted Russell Perkins, II Memorandum and Findings of Fact filed January 5, 1995

   Set forth in full at Appendix pp. 1-27

   All Opinions are contained in the Appendix.

STATEMENT OF JURISDICTION

The Supreme Court of the United States has jurisdiction pursuant to Title 28, Section 1254(1) P.L. 100-352, §2(a)(b) 102 Stat. 662 of the final order of the United States Circuit Court of Appeals for the Third Circuit filed the 19th day of June, 1996.

CONSTITUTIONAL PROVISIONS

FOURTH AMENDMENT

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describe the place to be searched, and the persons or things to be seized.

FOURTEENTH AMENDMENT, SECTION 1

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE FACTS

Appellant Ted R. Perkins, II was indicted on a count of Distribution and Possession with Intent to distribute approximately three (3) kilograms of cocaine by a grand jury on September 20, 1994 in violation of Title 21 U.S.C. §841(a)(1) and (b)(1)(A) and also Title 18 U.S.C. §2. Jurisdiction was also predicated on the provisions of Title 18 U.S.C. §3231.

On November 29, 1994 a Motion to Suppress Certain Evidence (contents of a black bag including approximately 3 kilos of cocaine) was filed. A hearing was held on the Motion to Suppress Evidence on December 29, 1994 an continued on January 3, 1995. Following said hearing the Suppression Motion was denied on January 5, 1995.

On January 12 and 13, 1995 Appellant was tried before a jury and on January 13, 1995 was found guilty as charged. At trial, the evidence sought to be suppressed at pretrial was used by the Government.

A Motion to Permit Filing a Motion for a New Trial was filed on January 23, 1995, was granted by the Trial Court on January 30, 1995 and the Motion for a New Trial (because of use of evidence sought to be suppressed) was denied by the District Court on January 30, 1995.

Ted Perkins, II was sentenced on April 18, 1995.

On September 1, 1994, the Pennsylvania State Police "interdicted" a bus at the Milesburg Exit of Route 80 at the Best Way Truck Stop, Appendix Vol. I, pp. 70-77. The Pennsylvania State Police have no information that the particular bus "interdicted" contained any illegal drugs, but the police

"interdicted" the bus in hopes of finding illegal drugs, Appendix Vol. II, pp. 172-175.

The Pennsylvania State Troopers wear identifying clothing, hats or jackets and some "interdiction team" members even display their police badges, Appendix Vol. 1, pp. 77-80. "We want to show the peoples that we are, in fact, the state police," Appendix Vol. I, pp. 77-79. The "interdiction team" is stationed near the door of the bus. Trooper Barber stationed himself near the bus door to watch the people disembark the bus, Appendix Vol. I, pp. 79-80. Trooper Barber watches the behavior of the people who leave the bus. The "team" also watches the passengers inside the bus "to see who's placing packages where, who's placing bags where," Appendix Vol. I, pp. 83-84 and Vol. II, pp. 175-177.

There was also a canine unit being prepared to board the bus handled by Trooper Jack Felicitia. The dog was about thirty feet

from the bus between it and the truck stop, Appendix Vol. I, pp. 83-88.

A young, thin black male exited the bus in a tired or groggy manner, stretching as if he just woke up, walked about ten or fifteen feet and then noticed Trooper Barber's presence. The young black man got a bewildered look on his face looking at Trooper Barber and then the canine, Appendix Vol. I, pp. 83-86. See also Appendix Vol. II, pp. 175-177.

The Pennsylvania State Troopers then intend to put the dog on the bus to check the interior of the bus, Appendix Vol. I, pp. 94-95. In fact, the canine was walked onto this particular bus, Appendix Vol. I, pp. 94-95 and Vol. II, pp. 178-179.

The tall, thin black male who disembarked the bus continued to watch the Pennsylvania State Police officer, pacing the sidewalk in front of the Best Way door, Appendix Vol. I,

pp. 91-95. In fact, Mr. Perkins was identified as the tall, thin, groggy black male, Appendix Vol. I, pp. 86-89. Mr. Perkins was on this sidewalk watching the police when the canine was taken on the bus, Appendix Vol. I, pp. 91-95 and Vol. II, pp. 179-180.

When the canine was taken on the bus the police asked all passengers to exit the bus before the dog is taken on the bus. In this instance all of the passengers exited the bus except for one woman, Appendix Vol. I, pp. 92-94 and Vol. II, pp. 207-210. This one older woman was sitting "directly" in front of the seat containing a bag no one claimed, Appendix Vol. I, pp. 118-119.

During the "interdiction" Trooper Barber learned that the tall, thin black male identified as Ted Perkins, II had boarded the bus in Newark, New Jersey, some four (4) minutes after it was to leave, Appendix Vol. I, pp. 98-99.

When the bus was reboarding, Trooper Barber could not find Mr. Perkins on the bus. Trooper Barber looked inside the facility. Trooper Barber checked the restaurant, game room, the store, hallways and the upstairs shower area of the bus stop, Appendix Vol. I, pp. 104-105. Mr. Perkins could not be found, and on cross, Trooper Barber admitted that he wanted to find Mr. Perkins to ask him some questions that Mr. Perkins did not have to answer, Appendix Vol. II, pp. 214-215. In fact, Trooper Barber wanted to make sure that Mr. Perkins got back on the bus, Appendix Vol. II, pp. 213-214. However, Trooper Barber admitted that when he was searching for Mr. Perkins, he "absolutely" did not have probable cause to arrest Mr. Perkins, Appendix Vol. II, pp. 213-214. Earlier Trooper Barber had stated that there was at all times a state trooper outside the bus in question, Appendix Vol. II, pp. 183-186.

After Mr. Perkins was not found, the "interdiction team" reboarded the bus and located a black leather bag (specifically described at Appendix Vol. I, pp. 119-121) which no passenger claimed. This black leather bag was taken off the bus after other passengers stated the bag belonged to the missing Mr. Perkins, Appendix Vol. I, pp. 116-124.

The black leather bag was taken off the bus by Trooper Barber and opened near the bus. Inside were various objects including three (3) kilograms of cocaine, Appendix Vol. I, pp. 124-128.

At suppression Mr. Perkins testified that he did not see the state troopers until he had exited the bus and walked ten to fifteen feet, Appendix Vol. II, pp. 226-228. Mr. Perkins saw the state police take the dog onto the bus, Appendix Vol. II, pp. 179-180. Mr. Perkins went around the truck stop to the side

of the truck stop where he watched the police around the bus and police on the bus, Appendix Vol. II, pp. 241-242. Mr. Perkins then saw an officer get off the bus with the black leather bag and open it up, Appendix Vol. II, pp. 250-251. However, before he saw the officers open the leather bag, Mr. Perkins intended to reboard the bus as it department and moved very near where he was, Appendix Vol. II, pp. 247-250.

After the police had the black leather bag, Mr. Perkins went back around the building, threw his bus ticket away and eventually was arrested at a neighboring truck stop, Appendix Vol. II, pp. 242-244 and pp. 258-259.

The jurisdiction of the United States Circuit Court of Appeals for the Third Circuit is predicated on Title 28, U.S.C. §1291.

ARGUMENT

THE ACTIONS OF THE PENNSYLVANIA STATE POLICE CONSTITUTE AN INTENTIONALLY COERCED ABANDONMENT OF BUS PASSENGER PERKINS' CARRY ON BAG AND THE FRUITS OF THE BAG'S SEARCH.

The facts of this case present an opportunity for this Court to address and lay to rest one of the most perplexing issues concerning the abandonment of property. Police authorities welcome the abandonment of property because abandoned property may be searched without a warrant. However, this Court must be forever vigilant to ensure that police authorities are not using tactics that will amount to intentional coercion to in some strong sense knowingly or intentionally force an individual to abandon his property. This forced abandonment must not come about solely from a guilty knowledge of the contents of a package or luggage. However, if the police

authorities are aware of that guilty knowledge and shape their tactics to take advantage of an innocent separation between the person and container to force an abandonment of that container, then the police authorities go too far. This is an abandonment of property that does not lose the protection of the Fourth Amendment warrant requirements.[1]

Under the facts of this case, the Pennsylvania State Police "interdicted" a Greyhound bus at a rest stop lasting about 45 minutes where the "interdiction team" knew that the passengers would debark the bus without their carry-on luggage, Appendix Vol. I, pp. 79-83. The "interdiction team" observes the debarking passengers on the bus to observe where various passengers leave their bags, Appendix Vol. I, pp. 83-84.

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[1] The Pennsylvania State Police are restricted by the Fourth Amendment warrant requirements as applied to Pennsylvania through the Fourteenth Amendment.

When the passengers debark to walk 50 feet to the facilities, the State Police station themselves so that they may be certain that debarking passengers see them and react to the State Police in police jackets, hats and badges, Appendix Vol. I, pp. 79-84. Certain troopers intend to observe debarking passengers reactions to the police.

It can be stated that the Pennsylvania State Police "interdiction team" intentionally takes advantage of the fact that bus passengers debark at this rest stop leaving their carry-on luggage on the bus and only alert the debarking passengers to the police presence after they leave their carry-on luggage on the bus.

The "interdiction team" then further exploits the fact that debarking passengers leave their carry-on baggage on the bus while they enter the restaurant for their rest stop. The Pennsylvania State Police then enter the

nearly empty bus after many passengers debark, requesting that the remaining passengers debark and conduct a canine sniff search of the carry-on baggage left on the bus by the original group of passengers debarking for the rest stop and a meal, Appendix Vol. I, pp. 83-88, pp. 94-95, and Vol. II, pp. 178-179.

The police authorities have taken advantage of an "innocent" separation of the debarking passengers and their carry-on baggage. The authorities have seized the bus containing absent passengers' carry-on baggage and then take a canine "interdiction team" member onto the bus. An "interdiction team" Pennsylvania State policeman remains either on the bus or next to the door at all times, Appendix Vol. II, pp. 183-186. This is a far cry from how a more frequently raised intentional coerced abandonment is raised.

More frequently, a claim of intentional coercion is raised when an abandonment of

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baggage takes place due to police conduct.[2] A good example of this may be found in the facts of United States v. Colbert, 474 F.2d 174 (5th Cir. 1973). In Colbert, the claim of intentional coercive conduct (harassing) arose because as police officers approached two men, both men placed their briefcases on the sidewalk. Upon police questioning, these gentlemen claimed to be book salesmen. The two gentlemen were then asked if the police could see their "wares" (contents of the grounded briefcases), the gentlemen asserted that they need not show police anything, but then denied the grounded briefcases were theirs. The two gentlemen began walking away without the briefcases. The officers then requested their Selective Service Cards from

[2] In this Petition, the original separation of the debarking (to the facilities) passengers from their carry-on baggage was innocent and as the passengers debarked was not an abandonment.

the two gentlemen, failing to produce these cards, the gentlemen were arrested and placed in the patrol car. At which time the two gentlemen again denied ownership of the grounded briefcases. A search of the abandoned briefcases revealed sawed-off shotguns inside. The majority in Colbert held that the briefcases were abandoned but a strong dissent cast doubt on the abandonment because the disclaimer of ownership was not believed by the police to justify the subsequent search.

This line of cases has continued into the present era usually concerning searches of buses that result in either 1) consent to search or 2) denial of ownership of a carry-on bag. The subsequent search of the bag is outside the Fourth Amendment Warrant requirements in either case permitting the use of discovered contraband at trial. See for

example, United States v. Lewis, 921 F.2d 1294 (D.C. Cir. 1990).

In Lewis, each of the bus passengers, Dennis S. Lewis and Leight T. Cothran consented to the search or denied ownership of the bag search. See Lewis, supra. 972 F.2d at 1296-1297.

As in most of this line of cases, the bus passengers complained of an intentionally coercive atmosphere created by the police that resulted in their either consent or denial of ownership (abandonment).

In each case the District Court agreed with the passengers and suppressed the results of both searches. The Appeals Court reversed finding no coercion.

The Pennsylvania State Police in the case of Petitioner Perkins present an entirely different set of facts by taking advantage of a known, innocent separation of the rest stopping passengers and their carry-on baggage

to seize the bus and baggage to conduct a canine sniff search while passengers were not present.

To begin with, the "interdiction team" had no indication that this particular bus pulling into the rest stop contained illegal drugs, Appendix Vol. II, p. 173. The police knew that the passengers debark the bus (Appendix Vol. I, pp. 79-80) and walk about 50 feet into the facilities, Appendix Vol. I, p. 83. The testifying Pennsylvania State Police Trooper Ernest W. Barber likes to observe the reactions of debarking passengers as they see the identifiable "interdiction team," Appendix Vol. I, p. 84. Admittedly, the "interdiction team" also watch the passengers debarking to observe where the various passengers leave their bags, Appendix

Vol. I, p. 84.[3] Of course, the Pennsylvania State Police "interdiction team" wears certain clothing that allows passengers to identify them as Pennsylvania State Police Troopers, Appendix Vol. I, pp. 76-79.

Specifically regarding Petitioner Perkins, he was a debarking passenger. Perkins was groggy as if he had been sleeping. He stretched and appeared to be tired, Appendix Vol. I, pp. 85-86. When Perkins saw the identifiably attired "interdiction team" member, Perkins stopped, "got a bewildered look on his face, he looked at me and he looked at the canine," Appendix Vol. I, pp. 83-86. This drew Trooper Barber's attention.

These facts demonstrate two (2) concepts. First, the Pennsylvania State Police knew the passengers would debark at the rest stop

[3] The "interdiction" of this particular bus occurred after dark at about 9:45 p.m. on September 1, 1994, Appendix Vol. I, pp. 76-79.

leaving their carry-on baggage on the bus. Secondly, the "interdiction team" wanted the debarking passengers to know that the Pennsylvania State Police were going to the bus with a canine unit where the passengers had innocently left their carry-on baggage.

These facts must be examined to control the police authorities in these type of cases. Where the authorities claim an abandonment of baggage--has their own conduct in taking advantage of an innocent separation of passengers and baggage to seize the baggage to conduct (in the view of the passengers) a canine search coerced the abandonment of the baggage in this Petition.

Respectfully submitted,

By: _____
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